

Legal Counsel Reform Act of 2005

Ordinance # 05-100-08a

Article I. Purpose; Findings

1.01. *Purpose.* To establish a Legislative Legal Counsel Office to assist the Tribal Council and a separate Legal Department to assist the Office of the Ogema.

1.02. *Findings.* The Tribal Council of the Little River Band of Ottawa Indians finds that:

a. the Constitution of the Little River Band of Ottawa Indians delegates to the Tribal Council the responsibility to “...exercise the inherent powers of the Little River Band by establishing laws through the enactment of ordinances and adoption of resolutions not inconsistent with this Constitution:

1. to govern the conduct of members of the Little River Band and other persons within its jurisdiction;

2. to promote, protect and provide for public health, peace, morals, education and general welfare of the Little River Band and its members[.]” *Article IV, Section 7(a).*

b. The government of the Little River Band of Ottawa Indians has rapidly grown into a multifaceted, complex operation which includes numerous Departments, businesses, and hundreds of employees working in governmental and business capacities; and,

c. The Constitution of the separates the functions of government into three distinct branches with the Tribal Council possessing legislative powers, the Ogema possessing executive powers, and the Courts possessing judicial powers; and,

d. The Constitution authorizes the Tribal Council to employ legal counsel and to authorize and appropriate funds for such purposes; and,

e. The Constitution authorizes the Tribal Council to create Departments within the executive branch of government, and to authorize and appropriate funds for such purposes; and,

f. In order to improve the efficiency of the government and avoid conflicts of interest by allowing lawyers to provide legal services for the Tribe on behalf of both the Tribal Council and Office of the Ogema at the same time, it is in the best interests of the Tribe to establish a Legislative Legal Counsel Office under the authority of the Tribal Council and a separate Legal Department under the authority of the Office of the Ogema.

G. Nothing in this Ordinance shall prohibit an attorney from providing services to both the Tribal Council and the Office of the Ogema in accordance with an adopted job description.

Article II. Adoption; Amendment; Repeal; Severability

2.01. *Adoption.* This Ordinance was adopted by emergency action of the Tribal Council by resolution # 05-0316-112.

- a. The permanent adoption of this ordinance by Tribal Council resolution # 05-0720-329.
- b. Emergency amendments adopting sec. 6.04 by Tribal Council resolution # 05-0907-432.
- c. Emergency amendments adopted by Tribal Council resolution # 07-1010-535.
- d. Permanent adoption of this ordinance by Tribal Council resolution #07-1128-606.

2.02. *Amendment.* This Ordinance may be amended by the Tribal Council in accordance with the Constitution and any rules set forth governing amendment of laws of the Little River Band of Ottawa Indians.

2.03. *Severability Clause.* If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

2.04. *Title.* This law shall be referred to as the “Legal Counsel Reform Act of 2005”.

2.05. *Repeal.* The following resolutions are hereby repealed: Resolution #03-806-239, Resolution #04-0915-374, and Resolution #05-0119-28.

Article III. Definitions.

3.01. *Definitions.* For purposes of this Ordinance, certain terms are defined in this Article. The word “shall” is always mandatory and not merely advisory.

3.02. *Chief Legislative Counsel* means the attorney employed by the Tribal Council to act as supervisor of the Legislative Legal Department whose primary purpose is to provide legal services to the Tribal Council and the Tribe.

3.03. *General Counsel* means the attorney employed by the Tribal Council to act as supervisor to the Legal Department whose primary purpose is to provide legal services to the Office of the Ogema and programs and departments supervised by the Ogema.

3.04. *Board*, as used in this ordinance, means those legislatively created entities whose primary purpose is to act as a hearing body, and does not include Boards of Directors to enterprises or other business forms.

3.05. *Agreement*, which includes contracts, memorandums, and other documents, means a –

- a. contract for services whether budgeted or unbudgeted;
- b. contract for goods in excess of authorized expenditures or unbudgeted in any amount;
- c. memorandums of agreements or understanding, whether or not funds are paid or accepted,

between the Tribe and other governments or entities; and

d. grant agreements.

3.06. Associate Counsel means an attorney employed by the Tribe who is assigned to both the Office of the Ogema and Tribal Council.

Article IV. Legislative Legal Counsel Office

4.01. *Establishment.*

a. The Tribal Council hereby creates and establishes the Legislative Legal Counsel Office which shall provide legal services to the Tribal Council.

b. The Legislative Legal Counsel Office shall be under the exclusive authority and supervision of the Tribal Council. The Tribal Council finds that the provision of legal advice should not be subject to delegated supervision in order to maintain the independence of legal opinions, avoid undue influence and direction, and prevent conflicts.

4.02. *Chief Legislative Counsel and Assistant Legislative Counsel.*

a. The Director of the Legislative Legal Counsel Office shall be called the Chief Legislative Counsel. The Chief Legislative Counsel shall be an individual hired by the Tribal Council and shall be employed at the discretion of the Tribal Council.

b. Each attorney working in the Legislative Legal Counsel Office shall have the title of Assistant Legislative Counsel and shall be under the supervision of the Chief Legislative Counsel.

The Tribal Council shall identify whether additional Associate Legislative Counsel positions are necessary by approving job descriptions for each Associate Legislative Counsel position, and describing the duties which shall be assigned to such position. The Tribal Council, may approve such new job descriptions, including any necessary budget modifications or supplemental appropriations needed to fund the new position. No Associate Legislative Counsel position may be posted without first having the job description approved. Approval of a job description shall be for the purposes only of the posted position, and may not be utilized for any subsequent posting, including where a vacancy occurs in an existing approved position.

c. The Chief Legislative Counsel and each Assistant Legislative Counsel shall be a licensed member in good standing of the State Bar of Michigan. A candidate for the position of Chief Legislative Counsel or Assistant Legislative Counsel shall disclose to the Tribal Council any pending or unresolved bar complaints against such candidate. The Chief Legislative Counsel and each Assistant Legislative Counsel shall, within one year of their employment by the Tribal

Council, become a licensed member in good standing of the Michigan State bar association.

d. Any attorney who has been previously employed by the Tribe in any capacity and who was terminated from such employment for cause shall not be eligible to work in the Legislative Legal Counsel Office.

4.03. Selection.

a. The Tribal Council shall approve employment of all legal counsel of the Legislative Legal Counsel Office by approval of employment contracts through resolution adopted by the Tribal Council.

b. Indian preference shall be applied to the hiring of a Chief Legislative Counsel.

c. The Chief Legislative Counsel shall be an individual employed as a full-time employee of the Tribe subject to all employment laws and regulations.

d. Associate Legislative Counsel shall be employed as full-time employees of the Tribe subject to all employment laws and regulations.

4.04. Duties.

a. The Legislative Counsel Office shall serve as legal counsel for the Tribal Council, and shall provide legal advice and assistance to the Tribal Council in accordance with the legislative powers of the Tribal Council listed in Article IV, section 7 of the Constitution and provide legal counsel to boards, committees and commissions of the Tribe.

b. Upon request of the Tribal Council, the Legislative Counsel Office shall develop laws, ordinances, resolutions, regulations or other form or policy, procedures, orders, and other like documents or amendments thereto for consideration by the Tribal Council.

c. The Legislative Legal Counsel Office shall provide a legal review of all contracts entered into by the Tribe.

d. The Chief Legislative Counsel shall prepare a proposed annual budget for the Legislative Counsel Office and shall present such budget to the Tribal Council for review and approval in accordance with the Constitution and laws of the Tribe.

4.05. Compensation. The Chief Legislative Counsel and each Assistant Legislative Counsel shall be paid reasonable compensation as authorized by the Tribal Council; provided, that such compensation shall be subject to the power of the Tribal Council to appropriate funds for such purposes.

Article V. Legal Department

5.01. Establishment.

a. The Tribal Council hereby creates and establishes a Legal Department which shall provide legal services to the Office of the Ogema.

b. The Legal Department shall be under the authority and supervision of the Ogema. Such supervision shall not be delegated to any other employee, officer or representative of the Tribe. The Tribal Council finds that the provision of legal advice should not be subject to delegated supervision in order to maintain the independence of legal opinions, avoid undue influence and direction, and prevent conflicts.

5.02. General Counsel and Assistant General Counsel.

a. The Director of the Legal Department shall be called the General Counsel. The General Counsel shall be hired by the Ogema and shall be employed under an employment contract at the discretion of the Ogema. All employment contracts shall be subject to ratification by the Tribal Council in accordance with Article IV, Section 7(b) of the Constitution.

b. Each attorney working in the Legal Department shall have the title of Assistant General Counsel and shall be under the supervision of the General Counsel.

The Ogema shall identify, at the discretion of the Ogema, whether additional Associate General Counsel positions are necessary by providing to the Tribal Council, for approval, job descriptions for each Associate General Counsel position, and describing the duties which shall be assigned to such position. The Tribal Council, may approve such new job descriptions, including any necessary budget modifications or supplemental appropriations needed to fund the new position. No Associate General Counsel position may be posted without first having the job description approved. Approval of a job description shall be for the purposes only of the posted position, and may not be utilized for any subsequent posting, including where a vacancy occurs in an existing approved position.

c. The General Counsel and each Assistant General Counsel shall be a licensed member in good standing of the State Bar of Michigan. The General Counsel and each Assistant General Counsel shall, within one year of their employment by the Ogema, become a licensed member in good standing of the Michigan State Bar association.

d. Any attorney who has been previously employed by the Tribe in any capacity and who was terminated from such employment for cause shall not be eligible to work in the Legal Department.

5.03. Selection.

a. The Ogema shall be authorized to hire and employ a qualified individual, subject to a contract

approved by the Tribal Council, to serve as General Counsel in accordance with the Constitution and laws of the Tribe.

b. Indian preference shall be applied to the hiring of a General Counsel.

c. The General Counsel shall be an individual employed as a full-time employee of the Tribe.

5.04. Duties.

a. The General Counsel shall provide legal advice and assistance to the Office of the Ogema, executive departments, and businesses owned by the Tribe; provided, that, if the Tribal Council authorizes separate legal counsel for any business of the Tribe, then the General Counsel shall not serve as legal counsel for such business.

b. The Legal Department, the General Counsel, and each Assistant General Counsel shall act in accordance with the executive powers of the Ogema listed in Article V, Section 5 of the Constitution.

c. The Legal Department may participate in negotiation of all contracts entered into by the Tribe as directed by the Ogema.

d. The General Counsel shall prepare a proposed annual budget for the Legal Department in accordance with the power of the Ogema to prepare and present an annual budget to the Tribal Council under Article V, Section 5(a)(5) of the Constitution, and in accordance with the power of the Tribal Council to approve or amend the annual budget.

5.05. Compensation. The General Counsel and each Assistant General Counsel shall be paid reasonable compensation as authorized by the Tribal Council; provided, that such compensation shall be subject to the power of the Tribal Council to appropriate funds for such purposes.

Article VI. Associate Counsel.

6.01. Associate Counsel may be employed by and/or assigned to both the Office of the Ogema and Tribal Council.

6.02. Duties. The duties of associate counsel shall be determined by the Ogema and/or Speaker of Tribal Council.

6.03.. Compensation. Associate Counsel shall be paid reasonable compensation as authorized by the Tribal Council; provided that such compensation shall be subject to the power of the Tribal Council to appropriate funds for such purposes.

Article VII. Limitations on Activities in the Absence of Employed Counsel; Approval of Job

Descriptions and Posting

7.01. Findings.

a. *General Counsel; Legal Department.* The Tribal Council finds that many of the activities of the Office of the Ogema require legal counsel and as such, continuing those activities without General Counsel, or legal counsel employed in the Legal Department, jeopardizes the Tribe, its assets, and the ability to provide services on behalf of members. The Tribal Council further finds that General Counsel shall be an employee of the Tribe in order to better understand the needs of the Tribe, Tribal government, programs, members, employees and community.

b. *Legislative Legal Counsel Office.* The Tribal Council finds that reviewing contracts, drafting ordinances, reviewing regulations, and many of the functions of the Tribal Council require legal counsel, and as such, continuing those activities without legal counsel jeopardizes the Tribe, its assets, and the ability to provide services on behalf of members. The Tribal Council further finds that the Chief Legislative Counsel shall be an employee of the Tribe in order to better understand the needs of the Tribe, Tribal government, programs, members, employees and community.

7.02. *Restrictions - Legal Department.* Where the Office of the Ogema has does not have employed General Counsel, no activity which requires legal assistance shall be conducted. Where the Office of the Ogema does not have employed legal counsel, and until such time as the Office of the Ogema has employed legal counsel, requests for legal assistance may be presented to the Speaker of the Tribal Council for assignment to the Legislative Legal Counsel Office where such assistance is necessary to protect the health, safety or welfare of the Tribe and its members.

7.03. *Restrictions - Legislative Legal Counsel Office.* Where the Tribal Council does not have employed legal counsel, no activity which requires legal assistance shall be conducted. Where the Tribal Council does not have employed legal counsel, and until such time as the Tribal Council employees legal counsel, requests for legal assistance may be presented to the Office of the Ogema for assignment to the Legal Department where such assistance is necessary to protect the health, safety or welfare of the Tribe and its members.

7.04. *Elected Officer Authority in the Absence of Legal Counsel.* Notwithstanding the prohibitions in this Article, the Ogema, the Tribal Council, or any Tribal Councilor, shall not be prohibited from filing civil actions for declaratory relief in the Tribal Court for the purposes of clarifying the duties of their office.

Article VIII. Prohibiting Outside Employment; Pro Bono

8.01. *Notice of Existing Clients Required Prior to Employment.* Attorneys employed by the Tribe to

provide legal counsel under the Legislative Legal Department or the Legal Department are employed on a full time basis to represent the activities of the Tribal Council and the Tribe, or the Office of the Ogema, and shall be required to provide notice of all outside legal activities prior to employment.

8.02. *Pro Bono.* Attorneys employed by the Tribe shall have the Tribe as a single client. Pro bono services, unless specifically required by the Michigan Bar Association, in which the attorney must be a member, are prohibited as conflicting with the broad array of services provided by or activities of the Tribe. Where Tribe employs an attorney to provide legal counsel specifically for members, such attorney shall be exempt from this prohibition.

8.03. *Outside Employment.* The activities of the Tribe involve an expanding scope of services and activities which, more likely than not, will result in conflicts. Except for pre-authorized representation as a member seated on boards, commissions or committees, Bar association section leadership, and other intermittent activities, attorneys shall be prohibited from engaging in outside employment.